

the proceeds of the sale made by the trustee Merrick, unappropriated. Which report was, by an order of the 30th of September, 1829, confirmed, and the proceeds directed to be applied accordingly.

Stone & McWilliams, by their petitions, asked leave to take testimony in support of their claim against the estate of Jeremiah Booth, deceased, for its whole amount, by proving the insolvency of Walker, &c. Which leave, by an order of the 24th of June, 1830, was granted as prayed; and testimony was accordingly taken and filed proving the insolvency of Walker.

After which the petitioners Lee and wife and Richard Jordan, excepted to the auditor's report of the 18th of March, 1829. 1. Because they were entitled to be preferred to the amount of their claim over the other creditors. 2. Because, if not entitled to be preferred, they were to come in equally for it with such creditors. 3. Because they were therein charged with the sum of \$555.25, as if the same were admitted by their petition to be an amount received by them in addition to the amount already charged to them, or credited to Jeremiah Booth in the auditor's account filed on the 19th of June, 1826, and otherwise charged to them in the accounts and proceedings in this case; while, in fact, the said sum of \$555.25 is the aggregate of items marked in said account filed on the 19th of June, 1826, No. 3, 4, 5, 6, 7, 8 and 12; and in that account accordingly credited to the said Booth; the items No. 5, \$11, and No. 7, \$157.03, being those assumed by Ann the petitioner, in her said petition as received by, and paid for her separate account, in all \$167.03; and items No. 3, \$98; No. 4, \$40.15; No. 6, \$134.91; No. 8, \$50; and No. 12, \$65, being in like manner there so assumed by the petitioner Richard; being in all \$388.22; as these respective totals are apportioned in said petition. And 4. Because the said Booth is not charged with the further sum of \$219, part of the commission of James Cook, the trustee, which sum said Cook, in his account reported by him on the 13th of February, 1819, to the Court, declares he paid over to the guardian of the petitioners, Edmund Key, for their use. The *petitioners accordingly insist, that said sum be charged 294 with interest thereon from the 31st December, 1812.

BLAND, C., 18th January, 1831.—The exceptions to the auditor's report standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

Before we proceed it may be well to take a retrospective view of the proceedings in this case to see how the present litigants, by the consequences of, and the allowable ingraftments upon the original suit, have come in, or been brought before the Court, in order, that we may the more clearly understand the relative positions which they hold, and the nature of the present controversy.